IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4324 OF 2004

Manilal Jethalal and Co. & Ors. : Petitioners
(Orig.Plaintiffs)

V/s.

Madanlal Radhakisan Daga & Anr. : Respondents
(Orig.Defendants)

...

Mr.P.S.Dani for the petitioners.

Mr.R.D.Soni instructed by M/s.Ram & Co., for the respondents.

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CORAM : S.A. BOBDE, J.

April 26, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Soni, learned counsel, appears and waives service of rule on behalf of the respondents.

Heard by consent.

2. The petitioners have filed a suit. They applied for an amendment to the plaint which has been rejected. Hence, this Writ Petition.

3. Originally, the suit was filed for an injunction restraining the respondents from demolishing the suit premises. According to the petitioners, pending the suit, the respondents demolished the suit premises. They, therefore, sought an amendment seeking reconstruction of the premises allegedly demolished. That application for amendment has been rejected by the trial Court mainly on the ground that the petitioners had already sought relief under Order XXXIX Rules 1 and 2 and, therefore, there is no need of seeking an amendment. The trial Court has also found the application for amendment to be belated.

4. Mr.Dani, leaned counsel for the petitioners, relied on the well-settled position of law that an amendment of this nature should be liberally allowed, unless it changes the nature of the suit or seriously prejudices the defendants. The contention on behalf of the petitioners seems to be correct.

5. Mr.Soni, learned counsel for the respondents, however, strenuously opposed this petition on the ground that the relief sought by the petitioners can only be granted by the Court under the Bombay Rent Act and, therefore, the amendment should not be allowed. In my view, the question

of jurisdiction goes to the root of the matter and is no ground for refusing an amendment to the plaint, in the circumstances of this case. If the contention on behalf of the respondents is accepted, then the suit as originally filed itself may not be maintainable.

6. In the circumstances, the rule is made absolute in terms of prayer clauses (a) and (b) which read as follows:-

> "(a) This Honourable Court be pleased to issue writ, certiorari and/or any other writ, order or direction in the nature of certiorari and thereby be pleased to quash and set aside the Judgement and Order passed by the learned Joint Civil Judge Junior Division Niphad below application exh.77 in Regular Civil Suit No.30/1999 dated 20th February 2004 (Exhibit "H" to this Petition).
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> (b) This Honourable Court be pleased to allow application exh.77 in Regular Civil Suit no.30/1990 pending on the

file of the learned Joint Civil Judge Junior Division Niphad being (Exhibit "F" to this Petition) with costs throughout."

7. The petitioners-plaintiffs to carry out the amendment not later than two weeks after the matter appears before the trial Court on the next date. All contentions of the respondents, including that of jurisdiction, are left open. The respondents shall be entitled to file additional Written Statement, if so advised.

Sd/-

S.A. BOBDE, J.